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14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16 SARAH ELIZABETH ALEXANDER, an  
17 individual; ROBERT ROY ALEXANDER,  
18 an individual,

19 vs. Plaintiffs,

20 COSTCO WHOLESALE CORPORATION  
21 dba Costco, a Foreign Corporation; VALLEY  
22 CONTAX INC., DOES I-X; and ROE  
23 BUSINESS ENTITIES XI-XX, inclusive,

24 Defendants.

25 Case No.: 2:21-cv-00509-APG-VCF

26 **STIPULATION AND ORDER TO  
27 EXTEND DISCOVERY PLAN AND  
28 SCHEDULING ORDER**

29 **(FOURTH REQUEST)**

30 Defendants Valley Contax Inc., by and through their counsel of record Alan W.  
31 Westbrook, Esq. of Perry & Westbrook, A Professional Law Firm, and Plaintiffs Sarah Elizabeth  
32 Alexander (referred to herein as "Mrs. Alexander") and Robert Roy Alexander (referred to herein  
33 as "Mr. Alexander"), by and through counsel, Bradley Mainor, Esq. and Ash Marie Blackburn,  
34 Esq. of the Mainor Wirth law firm, and Defendants, Costco Wholesale Corporation (hereinafter  
35 referred to as "Defendants") and Valley Contax Inc. (hereinafter referred to as "Plaintiffs"),  
36 by and through their respective counsel, stipulate and agree as follows:

1 referred to as “Costco”), by through counsel, Edgar Carranza, Esq. of the law firm Messner  
 2 Reeves LLP, hereby submit the instant stipulation and order to extend the Discovery Plan and  
 3 Scheduling Order (Fourth Request) pursuant to Local Rule II 26-4 as follows:  
 4

**I. GOOD CAUSE SUPPORTING THE EXTENSION.**

5 The parties come to this Court seeking a fourth extension of the Discovery Plan and  
 6 Scheduling Order governing this complicated product liability/personal injury case. The parties  
 7 have diligently moved this case forward but additional discovery remains to be completed which  
 8 warrants the requested extension. The parties attempts to meet the current deadlines have been  
 9 complicated by a medical provider’s ability to produce complete records and COVID, as  
 10 thoroughly addressed below.  
 11

**A. SUMMARY OF EFFORTS THUS FAR.**

12 As this Court is well aware, this lawsuit involves allegations that Plaintiff, Sarah Elizabeth  
 13 Alexander (referred to herein as “Mrs. Alexander”) suffered serious injuries to her eye after  
 14 wearing prescription contact lenses, which were distributed by Valley Contax and purchased from  
 15 Costco, as the result of an unspecified defect with the lenses.  
 16

17 On October 28, 2021, Plaintiffs filed their Complaint against Costco and Valley Contax  
 18 with the Eighth Judicial District Court for Clark County, Nevada. On February 17, 2021, Costco  
 19 filed its Answer denying Plaintiffs’ allegations and denying all liability for the injuries. On  
 20 February 18, 2021, Valley Contax filed its Answer denying Plaintiffs’ allegations and denying all  
 21 liability for the injuries claim.  
 22

23 On March 9, 2021, Plaintiffs filed their Request for Exemption from Arbitration in which  
 24 they outlined their claimed injuries and alleged damages. On March 29, 2021, Costco filed its  
 25 Notice of Removal and removed the matter to this Court based on diversity jurisdiction. On April  
 26 13, 2021, Costco filed its Statement Regarding Removal. The parties participated in the Fed. R.  
 27 Civ. P. 26(f) conference on April 14, 2021, and filed their proposed Joint Discovery Plan and  
 28 Scheduling Order which was entered by this Court on April 28, 2021.

1       On April 28, 2021, Plaintiff served their Initial Disclosure of Witness and Production of  
2 Documents Pursuant to FRCP 26(a)(1). On May 10, 2021, Defendant Costco served their Initial  
3 Disclosure of Witness and Production of Documents Pursuant to FRCP 26(a)(1). On June 10,  
4 2021, Defendant Valley Contax served their Initial Disclosure of Witness and Production of  
5 Documents Pursuant to FRCP 26(a)(1). Parties have exchanged their respective Fed. R. Civ. P. 26  
6 Disclosures. In the interim, the parties have been engaged in discovery. The parties served a first  
7 set of written discovery requests to each other some of which have been responded to. At the  
8 same time, Plaintiffs' medical records are being secured independently directly from the health  
9 care providers. As they are being produced, supplemental disclosures are being served to provide  
10 the records to all parties.  
11

12       Plaintiffs deposed Karen Crawford (Optical Manager) on January 19, 2022, Aaron  
13 Whitaker (Optician at Costco) on January 25, 2022, Max Ramos (General Manager at Costco) on  
14 June 9, 2022, Edgar Retana (Security Assurance Manager of Dynatec Laboratories) on July 12,  
15 2022, Robert Ahern (FRCP 30(b)(6) witness for Valley Contax) on October 17, 2022, and Leisha  
16 Crawford (FRCP 30(b)(6) witness for Costco) on December 6, 2022.

17       Mrs. Alexander's deposition went forward on July 1, 2022. Mr. Alexander's deposition  
18 was also set to take place on July 1, 2022 but had to be continued due to the length of Mrs.  
19 Alexander's deposition. The parties have rescheduled Mr. Alexander's deposition to take place  
20 on December 14, 2022.

21       An inspection of the right contact lens at issue in the matter was conducted on September  
22 26, 2022, near San Francisco, California. Plaintiff's counsel is personally delivered the subject  
23 contact lens to Defendant's expert. Destructive testing may also be necessary at a future  
24 inspection.

25       Plaintiff's treating physician and retained expert, Dr. Eric Brooker, was also deposed on  
26 September 28, 2022. During the deposition, Defense counsel identified additional medical records  
27 that had not been disclosed and requested that Dr. Brooker's deposition be continued.  
28

1 Unfortunately, due to several personal issues in Dr. Brooker's life, all parties had difficulty  
2 obtaining the additional records from his office. When his continued deposition was set to go  
3 forward on November 2, 2022, Mr. Westbrook, counsel for Valley Contax, was suffering from  
4 COVID and had to cancel the deposition. The parties actively attempted to reschedule Dr.  
5 Brooker's deposition before it was unilaterally set by Defendant Valley Contax on December 21,  
6 2022 in light of the expert deadline on January 4, 2023. Unfortunately, Plaintiff's counsel is  
7 already scheduled to be out of town for the holiday on December 21, 2022 and the parties have  
8 agreed to schedule the deposition on a mutually available date for all parties and the witness on  
9 January 6, 2023. This deposition is imperative for the production of expert reports, as Dr. Brooker  
10 was the first person to allege a defect of the subject contact lenses. He is also the only individual,  
11 aside from Plaintiff, who inspected the left contact lens at issue before it was destroyed. All parties  
12 agree that Dr. Brooker's deposition must go forward before the production of expert reports to  
13 better understand the nature of Plaintiff's allegations. Given that his deposition is set to take place  
14 two days after the current expert deadline, an extension is warranted. The parties also anticipate  
15 taking depositions of some or all experts following their designations.

16  
17 Lastly, the parties have agreed to submit this matter to a private mediation with Judge  
18 Jennifer Togliatti (Ret.) The parties are in the process of scheduling the same in February or  
19 March 2023.

20 **B. GOOD CAUSE.**

21 The shut down and subsequent limitations brought on by the COVID 19 pandemic initial  
22 led to some delays in the parties' respective ability to participate in the deposition process. In  
23 addition, counsel for Plaintiffs also was temporarily unavailable due to her maternity and the  
24 subsequent new addition to her family.

25 Since those initial delays, the parties have diligently deposed the parties and witnesses  
26 involved. They actively worked together to schedule an out-of-state inspection, have hired experts,  
27 and are gathering evidence to disclose their reports. Depositions of Robert Alexander and the  
28

1 experts still need to take place, despite the parties' active attempts to complete the same. This  
2 discovery has not been completed due to matters outside of the parties' control, such as COVID  
3 and personal dilemmas of Dr. Brooker. The parties agree Dr. Brooker's deposition is necessary  
4 before the production of expert reports and his deposition is currently set to go forward two days  
5 after the expert deadline, warranting an extension.  
6

7 Moreover, this is a significant personal injury matter that has and will continue to require  
8 significant effort by both parties. Plaintiff has already identified significant past medical expenses,  
9 unknown future medical expenses estimated to amount to \$100,000, loss of enjoyment of life in  
10 the amount of \$1,000,000, past pain and suffering in the amount of \$1,500,000 and future pain  
11 and suffering in the amount of \$2,500,000, to name some of the damage components identified  
12 thus far. Significant effort will be required to address each of the damage components, and the  
13 liability portion of this case.

14 The parties have agreed to submit this matter for private mediation with Judge Jennifer  
15 Tigliatti (Ret.) in February or March of 2023, further warranting an extension of the discovery  
16 deadlines.

17 **II. DISCOVERY COMPLETED TO DATE.**

18 In accordance with LR II 26-4(a), the Parties provide the following statement of discovery  
19 completed to date:

20 A. Plaintiff's Discovery.

- 21 1. Plaintiffs' FRCP 26 initial disclosures served 04-20-21.
- 22 2. Plaintiffs' First Supplement to FRCP 26 initial disclosures served  
23 on 07-20-21.
- 24 3. Plaintiff, Sarah Alexander's Answers to Costco's First Set of Interrogatories  
25 served on 07-23-21.
- 26 4. Plaintiff, Sarah Alexander's Responses to Costco's Request for Production  
27 served on 07-23-21.

- 1 5. Plaintiff, Robert Roy Alexander's Answers to Costco's First Set of
- 2 Interrogatories served on 07-23-21.
- 3 6. Plaintiff, Robert Roy Alexander's Responses to Costco's Request for
- 4 Production served on 07-23-21.
- 5 7. Plaintiffs' Second Supplement to FRCP 26 initial disclosures served
- 6 on 08-25-21.
- 7 8. Plaintiffs' Third Supplement to FRCP 26 initial disclosures served
- 8 on 09-02-21.
- 9 9. Plaintiffs' First Set of Requests for Production to Valley Contax served
- 10 on 11-15-21.
- 11 10. Plaintiff's First Set of Interrogatories to Defendant Valley Contax, served
- 12 on 11-16-21.
- 13 11. Plaintiffs' Fourth Supplement to FRCP 26 initial disclosures served
- 14 on 11-22-21.
- 15 11. Plaintiffs' First Set of Interrogatories to Costco served on 11-23-21.
- 16 12. Plaintiff's Fifth Supplement to FRCP 26 initial disclosures served
- 17 on 12-10-21.
- 18 13. Plaintiff noticed the deposition of Aaron Whitaker on 12-14-21.
- 19 14. Plaintiff noticed the deposition of Karen Crawford on 12-14-21.
- 20 15. Plaintiff Answers to Defendant Valley Contax's First Set of Interrogatories
- 21 served on 2-18-22.
- 22 16. Plaintiff Responses to Defendant Valley Contax's First Set of Production of
- 23 Documents served on 2-18-22.
- 24 17. Plaintiff Responses to Defendant Valley Contax's First Set of Request for
- 25 Admissions served on 2-18-22.
- 26 18. Plaintiff noticed the deposition of Max Ramos on 4-11-22.
- 27
- 28

1 18. Plaintiffs' Sixth Supplement to FRCP 26 initial disclosures served  
2 on 5-23-22.

3 20. Plaintiff noticed the deposition of Robert Ahern on 6-8-22.

4 21. Plaintiff noticed the deposition of Edgar Retana on 6-9-22.

5 22. Plaintiff amended the noticed deposition of Robert Ahern on 6-17-22.

6 23. Plaintiff amended the noticed deposition of Edgar Retana on 6-20-22.

7 24. Plaintiff vacated the noticed deposition of Robert Ahern on 6-22-22.

8 25. Plaintiffs' Seventh Supplement to FRCP 26 initial disclosures served  
9 on 6-22-22.

10 26. Plaintiffs' Eighth Supplement to FRCP 26 initial disclosures served  
11 on 6-30-22.

12 27. Plaintiff's First Set of Requests for Production of Documents to Defendant  
13 Costco served on 7-7-22.

14 28. Plaintiffs' Ninth Supplement to FRCP 26 initial disclosures served  
15 on 8-18-22.

16 29. Plaintiffs' Tenth Supplement to FRCP 26 initial disclosures served  
17 on 9-9-22.

18 30. Plaintiffs' counsel traveled to Pleasanton, CA on September 26, 2022 to deliver  
19 the right contact lens at issue in this matter to Defendants' expert for inspection.

20 31. Plaintiffs noticed the deposition of Robert Ahern, Valley Contax' FRCP  
21 30(b)(6) witness on October 14, 2022.

22 32. Plaintiffs noticed the deposition of Costco's FRCP 30(b)(6) witness on  
23 November 1, 2022.

24 B. Costco's Discovery.

25 1. Costco's FRCP 26 initial disclosures served 05-10-21.

26 2. Costco's First Set of Interrogatories to Plaintiff, Robert Roy Alexander

1 served 05-12-21.

2 3. Costco's First Set of Requests for Production to Plaintiff, Robert Roy  
3 Alexander served 05-12-21.

4 4. Costco's First Set of Interrogatories to Plaintiff, Sarah Alexander  
5 served 05-12-21.

6 5. Costco's First Set of Requests for Production to Plaintiff, Sarah Alexander  
7 served 05-12-21.

8 6. Custodian of records depositions were set for various health care providers  
9 on 08-17-21.

10 7. Costco's First Supplement to FRCP 26 disclosures served on 10-04-21.

11 8. Costco's Answers to First Set of Interrogatories from Plaintiff, served  
12 on 1-14-22.

13 9. Costco's Second Supplement to FRCP 26 disclosures served on 11-2-2022.

14 C. Valley Contax's Discovery.

15 1. Valley Contax's FRCP 26 initial disclosures served on June 9, 2021.

16 2. Valley Contax's First Set of Interrogatories to Plaintiff, Sarah Alexander  
17 on 12-30-21.

18 3. Valley Contax's Request for Production of Documents to Plaintiff, Sarah  
19 Alexander on 12-30-21.

20 4. Valley Contax's Request for Admissions to Plaintiff, Sarah Alexander  
21 on 12-30-21.

22 5. Valley Contax's First Supplement to FRCP 26 initial disclosures served  
23 on 1-28-22.

24 6. Valley Contax's Answers to Plaintiff Sarah Alexander's First Set of  
25 Interrogatories, served on 1-31-22.

26 7. Valley Contax's Responses to Plaintiff Sarah Alexander's First Set of Request

1 for Production of Documents, served on 1-31-22.  
2

3 8. Valley Contax Second Supplement to FRCP 26 initial disclosures served  
4 on 2-11-22.  
5

6 9. Valley Contax's Third Supplement to FRCP 26 initial disclosures served  
7 on 5-19-22.  
8

9 10. Valley Contax noticed the deposition of Mr. Alexander on 6-16-22.  
10

11 11. Valley Contax noticed the deposition of Mrs. Alexander on 6-16-22.  
12

13 12. Valley Contax's Fourth Supplement to FRCP 26 initial disclosures served  
14 on 6-29-22.  
15

16 13. Valley Contax's Fifth Supplement to FRCP 26 initial disclosures served  
17 on 7-22-22.  
18

19 14. Valley Contax noticed the deposition of Dr. Eric Brooker on 7-29-22.  
20

21 15. Valley Contax noticed the deposition of Dr. Eric Brooker again on September  
22 7, 13, 14, and 23, 2022. The deposition ultimately went forward on September  
23 28, 2022.  
24

25 16. Valley Contax's Sixth Supplement to FRCP 26 initial disclosures served  
26 on 10-3-22.  
27

28 17. Valley Contax's Supplemental Responses to Plaintiff's 1<sup>st</sup> and 2<sup>nd</sup> Requests for  
Production on 10-3-2022.  
29

30 18. Valley Contax noticed the deposition of Robert Alexander on October 27, 2022  
31 to take place on December 17, 2022.  
32

33 19. Valley Contax's Seventh Supplement to FRCP 26 initial disclosures served  
34 on 10-28-22.  
35

36 20. Valley Contax noticed the continued deposition of Dr. Eric Brooker on  
37 September 30, 2022, but vacated the deposition on November 2, 2022, due to  
38 the noticing counsel suffering from COVID.  
39

1           21. Valley Contax's Eighth Supplement to FRCP 26 initial disclosures served  
2           on 11-29-22.

3           22. Valley Contax's Ninth Supplement to FRCP 26 initial disclosures served  
4           on 11-30-22.

5           23. Valley Contax unilaterally noticed the continued deposition of Dr. Brooker on  
6           November 23, 2022 to take place on December 21, 2022, but is in the process  
7           of re-noticing the same for January 6, 2023, a mutually agreeable date for all  
8           parties and the witness.

9

10          **III. DISCOVERY REMAINING TO BE COMPLETED.**

11          In accordance with LR II 26-4(b), the Parties provide the following statement of discovery  
12          remaining to be completed:

13          1. Potentially destructive testing of right contact lens;  
14          2. Deposition of Plaintiff Robert Alexander on December 14, 2022;  
15          3. Deposition of Plaintiff's treating provider, Dr. Eric Brooker, on January 6, 2023;  
16          4. Depositions of Plaintiff's treating providers;  
17          5. Initial expert designations;  
18          6. Rebuttal expert designations;  
19          7. Depositions of Initial and Rebuttal Experts.

20          **IV. WHY REMAINING DISCOVERY HAS NOT BEEN COMPLETED.**

21          This is a complicated and complex product defect case. As referenced above, initially, the  
22          limitations related to the COVID 19 pandemic led to some delays and conflicts with counsels'  
23          availability/schedule. Nonetheless, good faith efforts were made by both parties to meet the  
24          obligations required of all parties.

25          Once the parties embarked on discovery, they have been able to move this matter forward  
26          with the appropriate diligence. As detailed above, significant discovery has been completed  
27          including the exchange of initial disclosures, completion of multiple waves of written discovery,

fact and party depositions, securing independent copies of Plaintiffs' medical records, and an out-of-state inspection.

Despite the parties' diligent efforts to obtain medical records from Dr. Eric Brooker and schedule his continued deposition, situations beyond their control impeded the same, including personal dilemmas of Dr. Brooker and a COVID diagnosis by Defendant's counsel. Dr. Brooker's deposition is necessary for the production of expert reports. His deposition is currently scheduled for January 6, 2022.

All counsels have trials taking place in the spring of 2023 but have nonetheless agreed to submit this matter for private mediation in February or March 2023.

If mediation is not successful, the parties' need time to schedule the depositions of Plaintiff's treating physicians and the designated experts.

## **V. PROPOSED SCHEDULE FOR COMPLETING DISCOVERY.**

This request for an extension of time is not sought for any improper purpose or other purpose of delay. The parties respectfully submit that this constitutes good cause for the extension. The following is a list of the current discovery deadlines and the parties' proposed extended deadlines.

| <b>Scheduled Event</b>      | <b>Current Deadline</b> | <b>Proposed Deadline</b> |  |
|-----------------------------|-------------------------|--------------------------|--|
| Discovery Cut Off           | April 5, 2023           | July 4, 2023             | If dispositive motions are filed, the deadline for filing the joint pretrial order will be suspended until 30 days after decision on the dispositive motions or further court order. |
| Amend Pleadings/Add Parties | January 4, 2023         | April 4, 2023            |  |
| Initial Expert Disclosures  | January 4, 2023         | April 4, 2023            |  |
| Rebuttal Expert Disclosures | March 8, 2023           | June 6, 2023             |  |
| Dispositive Motions         | May 3, 2023             | August 1, 2023           |  |
| Joint Pre-Trial Order       | June 2, 2023            | September 1, 2023        |  |

This is the fourth request for extension of time in this matter and no trial date will be impacted by the extension as no such trial date has been set.

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1       The parties submit that the reasons set forth above constitute good cause for the requested  
2 extension.

3       Dated this 7th day of December, 2022.  
4       PERRY & WESTBROOK  
5       A Professional Corporation

6       /s/ Alan Westbrook  
7       ALAN W. WESTBROOK, ESQ.  
8       Nevada Bar No. 6167  
9       11500 S. Eastern Avenue, Ste. 140  
10      Henderson, NV 89052  
11      *Attorney for Defendant Valley Contax Inc.*

12      Dated this 7th day of December, 2022.  
13      MAINOR WIRTH, LLP

14       /s/ Ash Marie Blackburn  
15       ASH MARIE BLACKBURN, ESQ.  
16       Nevada Bar No. 14712  
17       6018 S. Fort Apache Road, Ste. 150  
18       Las Vegas, NV 89148  
19       *Attorney for Plaintiffs, Sarah Elizabeth Alexander  
20       and Robert Roy Alexander*

21      Dated this 7th day of December, 2022.  
22      MESSNER REEVES, LLP

23       /s/ Edgar Carranza  
24       EDGAR CARRANZA, ESQ.  
25       Nevada Bar No. 5902  
26       8945 W. Russell Road, Suite 300  
27       Las Vegas, NV 89148  
28       *Attorney for Defendants, Costco Wholesale*

17      **IT IS SO ORDERED.**

18      DATED this December 7, 2022, 2022.



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20      UNITED STATES MAGISTRATE JUDGE